85-284

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

Supreme Court, U.S.
FILED
AUG 16 1985
JOSEPH F. SPANIOL, JR.
CLERK

JANICE M. HAYES
Petitioner,
vs.

HELEN C. CANNON, EARL EVANS, JAMES GAY III, CONNIE LARSEN, GLEN C. TAYLOR, HERMAN VAN BETTEN, CLARE WOODBURY, individually and as members of the Board of Trustees of the Clark County School District in 1976, BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT, THE CLARK COUNTY SCHOOL DISTRICT, KENNY C. GUINN, CHARLES SILVESTRI, EDNA HINMAN, KENNETH ENGLEHART, JOHN T. PAUL, THERON SWAINSTON, ROBERT PETRONI, SCOTTY GLADSTONE and MERVIN IVERSON, LAMAR LEFEVRE, NEVADA DEPARTMENT OF EDUCATION, JOHN GAMBLE, HARRY SWAINSTON, AETNA LIFE & CASUALTY INSURANCE CO., SILVER STATE SCHOOLS FEDERAL CREDIT UNION, JEFFREY SOBEL, ROBERT HILLEMAN, CLARK COUNTY CLASSROOM TEACHERS ASSOCIATION, NEVADA STATE EDUCATION ASSOCIATION, NATIONAL EDUCATION ASSOCIATION, FRANK SCHRECK, and DOES I-X, inclusive,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

JANICE M. HAYES, ESQ.
3391 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135
Petitioner
Member of the Bar of
this Court.

INDEX TO APPENDIX

DOCUMENT	Page
Memorandum of the Ninth Circuit Court of Appeals, Case No. 83-1889, entered on February 7, 1985	1a
Order granting summary judgment and dismissing some claims without prejudice entered on March 17, 1982 in Case No. CV-LV-79-137, RDF, Hayes v. Cannon, in the U.S. District Court for the District of Nevada	19a
Order entered in the instant action in a prior appeal in CV-LV-79-137,RDF, Case No. 82-5403, entered by the Ninth Circuit Court of Appeals	25a
Order entered in the District court following remand of appeal, supra at 25a. District Judge Roger Foley instructed the parties to give the court directions what to do next.	26a
Civil Docket Continuation Sheet. Docket sheet shows court did not rule on Hayes's motions to compel discovery, and that the court conducted no proceedings on remand.	28a
Order dismissing action/ Entered onFebruary 4, 1983, affirming district court's dismissal without prejudice of most claims and of summary judgment on the dismissal claim	29a
Case No. CV-Lv-79-142, RDF, Hayes v. Justices of Nevada Supreme court, a paralel action.Selected excerpts from Complaint	31a, 32a, 33a

INDEX TO APPENDIX (cont.)

Page

Letter dated December 26, 1979 from Petitioner to District Judge Roger Foley, advising him of filing of Case 79-5777 in the U.S. Supreme Court, pursuant to 28 U.S.C. §1257(2) 34a

Order in parallel case, CV-79-142, granting defendants' motion to dismiss. Entered on February 7, 1980 35a

Minute Order entered in chambers denying reconsideration 37a

Order in CV-LV-79-142, RDF denying request for entry of judgment of dismissal and findings of fact and conclusions of law 38a

Order entered in Case No. 80-5311 on appeal, No. 79-k42m RDF, affirming district court's orders in Hayes v. Justices of Nevada Supreme Court, a companion case. Entered on June 17, 1982 affirming 25a, 37a, 38a, supra 39a

Order entered on April 4, 1983 in the Court of Appeals denying motion to vacate order and for dismissal for want of jurisdiction 41a

Cover Sheet in Case No. 82-1419 in this court for petition for rehearing on order denying ceriorari and for dismissal for want of jurisdiction 42a

INDEX TO APPENDIX

	Page
Judgment of the United States Court of Appeal for the Ninth Circuit in the instant action, entered on February 7., 1985	43a
Order entered on April 5, 1985 denying rehearing	44a
Nevada Rule of Appellate Procedure 46(b). Order entered October 22, 1981 amending Rule, with text prior to amendment	45a
First, Fifth and Fourteenth Amendments	46a
101 S. Ct. LXXXIII indicating that certiorari was granted in 1980 in Hayes v. Gladstone and Iverson. Gladstone and Iverson are defendants in instant action.	47a

FILED
FEB - 7 1985
PHILLIP B. Winberry
Clerk, U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANICE HAYES, Plaintiff-Appellant, vs. HELEN C. CANNON, et al., Defendants-Appellees.	NO. 83-1889 D.C. NO. CV 79-137-RDF MEMORANDUM*

Appeal from the United States
District Court for the
District of Nevada
Honorable Roger D. Foley,
Senior District Judge, Presiding

Argued and Submitted July 13, 1984

Before: PHILLIPS,** FLETCHER, and REINHARDT,
Circuit Judges

---

*The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).

**Honorable Harry Phillips, Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

Appellant Hayes was dismissed from her teaching position by the Board of Trustees of the Clark County School District upon the statutory ground of "Neglect of Duty."[1] After unsuccessfully challenging her dismissal in state court,[2] Hayes filed the instant action in federal district court. Hayes' amended complaint sought damages from numerous defendants as well as declaratory relief proclaiming various Nevada statutes unconstitutional.

By order of March 10, 1981, the district court dismissed the majority of Hayes' claims. The district court retained jurisdiction over two federal damage claims but declined to assume pendent jurisdiction over all but one of Hayes' state law claims, finding such claims to be largely unrelated to the federal causes of action alleged. Moreover, the district court dismissed Hayes' various claims for declaratory relief, concluding that the legal issues

presented therein would be adequately addressed in the resolution of the remaining damage claims.

The three surviving causes of action were dismissed on March 17, 1982. The district court entered summary judgment against Hayes on the two Federal damage claims and dismissed the remaining state law claim without prejudice, declining to retain pendent jurisdiction in the absence of a cognizable federal cause of action.

On appeal, Hayes challenges the district court's dismissal of each one of her claims. We cannot say that the district court erred in dismissing Hayes' various claims and thus affirm.

1. The State Law Claims

A federal court may exercise pendent jurisdiction over a non-federal claim when

(1) there is alleged a federal claim of sufficient substance to confer subject matter jurisdiction on the court, and (2) the relationship between the federal and non-federal claims is such that a litigant would ordinarily be expected to try them in a single judicial proceeding. United Mine WOrkers of America v. Gibbs, 383 U.S. 715, 725 (1966). The latter occurs when the federal and state claims "derive from a common nucleus of operative fact." Id.

However, pendent jurisdiction is a doctrine of discretion, not of plaintiff's right. Thus, although a federal court may have the power to exercise pendent jurisdiction, it retains wide discretion in deciding whether to invoke such power in a given case. Id. at 726.

In this action, Hayes' amended complaint alleged numerous state law violations, including breach of contract on

the part of the School District, libel and slander, invasion of privacy, attorney malpractice, and separate breach of contract claims against various state educational agencies, the Aetna Insurance Company, and the Silver State Schools Credit Union.

The district court dismissed all of the state law allegations, with the exception of the breach of contract action against the School District, finding these claims to arise from different facts and to require different elements of proof than the federal causes of action alleged in the complaint. We cannot say that the district court abused its discretion in reaching such a conclusion; indeed, we note that the district court carefully evaluated each of Hayes' state law claims before chosing to refrain from exercising pendent jurisdiction.

The district court originally retained

pendent jurisdiction over the breach of contract action against the School District, finding this claim to arise out of the same facts as the federal due process challenges to Hayes' dismissal. However, when the district court subsequently dismissed the due process claims it dismissed the breach of contract action as well. When all federal claims are dismissed before trial, remaining state law claims should also generally be dismissed. Id.; see also Wren v. Sletten Construction Co., 654 F.2d 529, 536 (9th Cir. 1981). Thus, the district court properly declined to retain pendent jurisdiction over the breach of contract claim against the School District.

II. The Claims for Declaratory Relief

Federal district courts are given substantial discretion in choosing whether to exercise their jurisdiction to grant declaratory relief. See, e.g., Geni-Chlor

International, Inc. v. Multisonics Development Corp., 580 F. 2d. 981, 985 (9th Cir. 1978). In determining whether to issue a declaratory judgment, courts must consider whether the judgment "will serve a useful purpose in clarifying and settling the legal relations in issue" and whether the judgment will "terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." McGraw-Edison Co. v. Preformed Line Products Co., 362 F. 2d 339, 342 (9th Cir.) (citation omitted), cert. denied, 385 U.S. 919 (1966).

The district court evaluated Hayes' claims in accordance with these criteria and concluded that declaratory relief would be inappropriate. We cannot say that the district court erred in declining to exercise its discretionary power to grant declaratory relief. The court properly recognized that a declaratory judgment invalidating numerous Nevada statutes would

be of little assistance in resolving Hayes' damage claims. Moreover, the court noted that the issues involved in the claims for declaratory relief would be, or should have been, addressed in the resolution of the damage actions. Finally, we agree with the district court's assessment that the damage remedy would better afford relief for the alleged violations that gave rise to Hayes' complaint.

III. The Federal Due Process Claims

Hayes' complaint alleged two separate violations of due process; one arising from her dismissal, the other stemming from a two-day suspension without pay that she had received prior to being dismissed. The district court granted summary judgment against Hayes on both claims, finding that neither involved triable issues of fact and that the defendants were entitled to judgment as a matter of law.

A. The Dismissal

The district court found Hayes' due process claim relating to her dismissal to have been barred by res judicata. We agree.

The judicial proceedings of a state court must be afforded the same full faith and credit in every court within the United States as they are in the court in which they were conducted. 28 U.S.C. § 1738 (1982). All issues actually litigated in a state court are entitled to the same preclusive effect in a subsequent federal action as they would receive in the state court in which judgment was rendered. Allen v. McCurry, 449 U.S. 90, 96 (1980). Moreover, the Supreme Court has recently emphasized that issues not actually litigated in state court also may not be raised in a subsequent federal action if, under state law, such issues would be

precluded by a prior suit in state court. Migra v. Warren City School District Board of Education, 104 S. Ct. 892, 898 (1984). Thus, a state court judgment has the same preclusive effect in federal court as the judgment would have in subsequent state court proceedings. Id.

Under Nevada law, a judgment "on the merits by a proper court will operate to bar every matter offered... and every other matter which might with propriety have been litigated and determined in that action in subsequent litigation between the parties or their privies involving identical cause of action." In re Estate of Firsching, 94 Nev. 252, 254-55, 578 p.2d 321, 322 (1978) (per curiam) (quoting Bissell v. College Development Co., 89 Nev. 558, 561, 517 p.2d 185, 187 (1973)). Under Nevada state preclusion law, therefore, a final judgment operates as an absolute bar to a second suit between the same parties or their privies

based on the same cause of action actually litigated and also as to every claim which might have been presented. In Nevada, one cause of action involves all claims which arise from the same factual situation. Id.

The district court, after carefully assessing each of her claims, found Hayes' due process challenges to her dismissal to arise from and involve the same set of facts as those aleady litigated in the Nevada state court action. The fact that not all of the claims were actually raised in the state court proceeding is immaterial; as long as such claims could have been raised they are to be accorded res judicata effect in any subsequent litigation, state or federal. Hayes' due process claims involve the same infringement of the same right that was litigated in Nevada state court and arise from an identical nucleus of facts. As a result, we uphold the district court's determination that Hayes is precluded from

raising such claims in this federal action We further emphasize that Hayes canno properly litigate such claims in an subsequent action, in state or federa court.

B. The Suspension

Hayes further alleges that the manne in which she was suspended for two day without pay violated due process and tha the statute authorizing such suspension wa an unconstitutional impairment of contract The district court properly recognized th latter contention to be specious. contract cannot be "impaired" within th meaning of the contract clause by a statut enacted prior to the making of the contrac and directly incorporated therein. Se Keding v. Texaco, Inc., 598 F.2d 513, 51 (9th Cir. 1979).

The statute in question provides tha

an employee may be disciplined by a two-day suspension without pay "after a due process hearing has been held." Nev. Rev. Stat.§ 391.314(4) (1976). Hayes received an informal hearing before a School District official. Testimony was taken and Hayes was given an opportunity to be heard. Her due process challenge to the hearing procedure alleged, among other things, that hearsay evidence was admitted, witnesses were not sworn, the hearing was neither recorded nor transcribed, she was denied an impartial hearing officer, and she could not appeal the officer's decision.

The district court evaluated the hearing procedure according to the tripartite test articulated in Mathews v. Eldridge, 424 U.S. 319 (1976), mindful that "due process" is a flexible concept requiring such procedural protections as the particular situation demands. In Mathews, the Court instructed that identifying the

specific dictates of due process requires an examination of three distinct factors: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of such interest by the procedures used and the value of additional procedural safeguards that could be employed; and (3) the government's interest, including the function involved and the burdens, both fiscal and administrative, created by any such additional procedural requirements. Id. at 334-35.

We agree with the district court's conclusion that the burdens of adopting the procedures of a full-blown judicial trial cannot be justified by the minimal property and liberty interests implicated by a two-day suspension. We further agree that the public interest in education would be unjustifiably impaired if school officials could not discipline teachers without having

to conduct a full judicial hearing. Accordingly, we uphold the district court's determination that the procedures followed by the School District were sufficient and that Hayes was not deprived of a property or liberty interest without due process of law.

IV. Remaining Contentions

Hayes challenges as error the district court's failure to address the constitutionality of Nevada Rule of Appellate Procedure 46(b). However, Hayes' amended complaint clearly stated that she did not seek resolution of the constitutionality of Nev. R. App. P. 46(b) in this action as the issue was being litigated at that time in other cases which Hayes had appealed to this court.[4] Accordingly, the district court can be faulted for failing to address a claim expressly excepted from its consideration.

Hayes also claims the district court erred in failing to rule on various discovery motions. These motions sought the discovery of material relating to her dismissal and to her numerous state law claims over which the court had previously declined to exercise pendent jurisdiction. Because the information sought by Hayes was not relevant to the issues properly before the court, we cannot say that she was prejudiced by the court's failure to rule on the discovery motions.

Finally, we do not feel that the defendants should be awarded attorney's fees in this case. Although many of Hayes' claims border on being vexatious, we cannot say that the action was brought in bad faith or was wholly unreasonable. We caution, however, that the imposition of sanctions may well be appropriate if Hayes persists in raising similar claims in subsequent federal actions.

AFFIRMED

FOOTNOTES

1. From September 1975, through March 1976, Hayes had received numerous warnings about her persistent tardiness. She had been tardy 27 times during this period. On March 10, 1976, pursuant to Nevada law, Hayes received a two-day suspension without pay for neglect of duty. Hayes continued to be tardy after her suspension and, on May 18, 1976, the Superintendent notified her of his intention to recommend her dismissal to the Board of Trustees. At Hayes' request, a two-day hearing was held and full report was submitted to the Board of Trustees. The Board accepted the recommendation for dismissal and dismissed Hayes from her teaching position on November 19, 1976, retroactive to the end of the previous contract year, June 4, 1976.

2. Hayes filed a petition for judicial review with the Eighth Judicial District Court of the State of Nevada. After reviewing the entire record, the state court denied the petition on May 7, 1977. Hayes appealed to the Nevada Supreme Court, which dismissed her appeal on July 12, 1979 pursuant to Nev. R. App. P. 42(b) (voluntary dismissals) and Nev. R. App. P. 46(b) (prohibiting in pro per appearances before the Nevada Supreme Court). Hayes then appealed to the United States Supreme Court, challenging the constitutionality of Nev. R. App. P. 46(b). The Supreme Court dismissed her appeal for lack of jurisdiction and simultaneously denied certiorori.

3. Nev. Rev. Stat. § 391.314(4), which authorizes a two-day suspension without pay for disciplinary purposes, was originally enacted in 1967. Chapter 391 was expressly incorporated into the contract between Hayes and the School District, signed on August 26, 1975.

4. In Hayes v. The Honorable Justices of the Supreme Court of Nevada, No. 80-5311 (9th Cir. June

17, 1982) (unpublished memorandum), this court found that Hayes' appeal before the Nevada Supreme Court was dismissed at her request and not on the basis of Nev. R. App. P. 46(b). In Hayes v. Valley Bank of Nevada, No. 81-5630 (9th Cir. June 21, 1982) (unpublished memorandum) this court held that Hayes lacked standing to challenge the constitutionality of Nev. R. App. P. 46(b) because it was not applied to her.

ENTERED

MAR 17 1982

Clerk, U.S. District Court, District of Nevada

By _____ Deputy

RECEIVED AND FILED

MAR 17 2:25 PM '82

Carol C. Fitzgerald Clerk

By _____ Deputy

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JANICE HAYES, Plaintiff,	Civil-LV 79-137, RDF
vs.	
HELEN C. CANNON et al. Defendants	SUMMARY JUDGMENT

This action came on for hearing before the Court, Honorable Roger D. Foley, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED:

1. Summary judgment is hereby granted on the claim of deprivation of property or liberty without due process of law in the plaintiff's dismissal as a school teacher. Summary judgment is granted against the plaintiff and in favor of Helen C. Cannon, Earl Evans, James Gay III, Connie Larsen, Glen C. Taylor, Herman Van Betten and Clare Woodbury, individually and as members of the Board of Trustees of the Clark County School District; the Board of Trustees of the Clark County School District; the Clark County School District; Kenny C. Guinn, Charles Silvestri, Edna Hinman, Kenneth Englehart, John T. Paul, Theron Swainston and Robert Petroni, individually and as agents or employees of the Clark County School District; Harry Swainston, individually as Deputy Attorney General of the State of Nevada; Lamar LeFevre, individually and as Director of the Nevada Department of Education; John Gamble, individually and as State

Superintendent of Public Instruction.

2. Summary judgment is hereby granted on the claim of deprivation of property or liberty without due process of law in the withholding of two days' pay. Summary judgment is granted against the plaintiff and in favor of the Board of Trustees of the Clark County School District and the Clark County School District.

3. This Court refuses to exercise pendent jurisdiction over the plaintiff's breach of contract claims against Helen C. Cannon, Earl Evans, James Gay III, Connie Larsen, Glen C. Taylor, Herman Van Betten and Clare Woodbury, individually and as members of the Board of Trustees of the Clark County School District; the Board of Trustees of the Clark County School District; the Clark County School District; Kenny C. Guinn, Charles Silvestri, Edna Hinman, Kenneth Englehart, John T. Paul, Theron Swainston, and Robert Petroni, individually and as agents or employees of

the Clark County School District; Scotty Gladstone and Mervin Iverson, individually as members of the Hearing Commission. This claim is dismissed without prejudice.

4. Pursuant to this Court's order of March 10, 1981, this Court refused to exercise jurisdiction over plaintiff's claim for declaratory judgment.

5. Pursuant to this Court's order of March 10, 1981, this Court dismisses with prejudice plaintiff's claim of denial of due process of law in her dismissal as a teacher as against the Nevada Department of Education, State of Nevada.

6. Pursuant to this Court's order of March 10, 1981, this Court refuses to exercise pendent jurisdiction over plaintiff's libel and slander claims against defendants Board of Trustees of the Clark County School District; Scotty Gladstone, individually and as a member of the Hearing Commission; Frank Schreck and Roger Hilleman. These claims are dismissed

without prejudice.

7. Pursuant to this Court's order of March 10, 1981, this Court refuses to exercise pendent jurisdiction over plaintiff's claims entitled "Invasion of Privacy" against defendants Robert Petroni, individually and as an agent or employee of the Clark County School District; and the Board of Trustees of the Clark County School District. These claims are dismissed without prejudice.

8. Pursuant to this Court's order of March 10, 1981, this Court refuses to exercise pendent jurisdiction over plaintiff's malpractice claims against Frank Schreck and Jeffrey Sobel. These claims are dismissed without prejudice.

9. Pursuant to this Court's order of March 10, 1981, this Court refuses to exercise pendent jurisdiction over plaintiff's breach of contract claims against the National Education Association, the Clark County Classroom Teachers

Association, the Nevada Education Association, Aetna Life & Casualty Insurance Co., and Silver State Schools Federal Credit Union. These claims are dismissed without prejudice.

10. Pursuant this Court's order of March 10, 1981, this Court dismisses from this suit the "DOE" defendants.

Plaintiff no longer has any action before this Court against any of the defendants in this suit arising from the amended complaint, filed August 8, 1980.

DATED: March 17 ,1982.

ROGER D. FOLEY
DISTRICT JUDGE

FILED
SEP - 8 1982
PHILLIP B WINBERRY
Clerk, U.S Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANICE HAYES,	)	No. 82-5403
	)	
Plaintiff-Appellant,	)	DC# CV-79-137
	)	RDF Nevada
vs.	)	(Las Vegas)
	)	
HELEN C. CANNON, et al.,	)	ORDER
	)	
Defendants-Appellees.	)	
	)	
	)	

Before: CHOY and SKOPIL, Circuit Judges

Upon reviewing the record in the case, the court finds that the district court's order is not appealable as a final judgment. See Scott v. Eversole Mortuary, 522 F.2d 1110 (9th Cir. 1975). For this reason, the court on its own motion dismisses the appeal. All pending motions are denied as moot.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS, NEVADA

JANICE HAYES, Plaintiff, vs. HELEN C. CANNON, et al., Defendants	RECEIVED AND FILED Oct 22, 1982 Civil-LV 79-137, RDF MINUTES OF THE COURT Dated: October 22, 1982

PRESENT:
THE HONORABLE ROGER D. FOLEY UNITED STATES DISTRICT JUDGE

DEPUTY CLERK: PRESTON BLUIETT, JR.

REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF NONE APPEARING

COUNSEL FOR DEFENDANTS(S) NONE APPEARING

MINUTE ORDER IN CHAMBERS XXXX

IN COURT PROCEEDINGS:

On March 17, 1982, summary judgment was entered in this case disposing of all claims of the Plaintiff's first amended complaint. the plaintiff filed her notice of appeal on April 28,1982. On October 5, 1982, the mandate from the Ninth Circuit Court of Appeals dismissing the plaintiffs appeal was

spread upon the record.

Counsel for the parties shall, on or or before 4 o'clock p.m. on Friday, November 5, 1982, file written status reports giving this Court directions on what action, if any, should next be taken in this case.

CLERK U.S. DISTRICT COURT

By:

_____
Deputy Clerk

* Emphas in original

CIVIL DOCKET CONTINUATION SHEET

Plaintiff	DEFENDANT
JANICE HAYES	Helen C. Cannon, et al.

CIV-LV-79-137, RDF

Page 14 of ___ pages

DATE	NR	PROCEEDINGS
9-28-82	164	Exparte motion that crt enter ord re mtn to compel clk cnty School Dist to ans interrog obo P w/exhib. (re #102). M 8/1/82) SS trtd as mtn, not ex party
	...	.....
10-22-82	169	MINUTE ORDER (RDF) ORD cnsl have to 1k/5/82 to fle wrtn status report giving Crt directions re what action next be taken this case.
	..	.....
12-23-82	178	EX PARTE SECOND REQUEST that crt enter order on mtn to compel prod of docs by CC School Dist. (trtd reg mtn)
1-5-83	---	SUB TO RDF: #170, 171, 172, 173, 174, 175 & 177
2-4-83	180	JUDGMENT (CCF/hrl) ORD all pend mtrs in this act denied as moot; all Ps claims against all Ds dism w/out lv to amd. EOD 2/8/83

ENTERED

FEB 8 1983

Clerk, U.S. District Court, District of Nevada

By_____
Deputy

RECEIVED
AND FILED

FEB 4 3:41
PM '83

Carol C. Fitzgerald
Clerk

By_____
Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

JANICE HAYS, Plaintiff, vs. HELEN C. CANNON, et al. Defendants	)	Civil-LV 79-137, RDF ORDER DISMISSING ACTION

All pending matters in this action are denied as moot.

This action is dismissed; that is, all of the Plaintiff's claims against all of the defendants are hereby dismissed without leave to amend. Let judgement be entered accordingly.

DATED this 4th day of February, 1983.

ROGER D. FOLEY
Senior United States
District Judge

EXHIBIT 3

COMPLAINT FILED JULY 11, 1979

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

CASE NO. CV-LV-79-142, RDF

JANICE HAYES VS. HONORABLE JUSTICES OF THE NEVADA SUPREME COURT.

. . . .

PAGE 2, Lines 23-26

Statement

. . . .

The (Nevada) Supreme Court has denied Plaintiff's (Hayes) petitions for leave to appear in proper person and petitions for a voluntary dismissal without prejudice to Plaintiff's right to pursue her claims for relief in a Federal court.

(Emphasis supplied.)

(Material in parentheses added)

. . . .

PETITIONER'S COMPLAINT FILED JULY 11, 1979

UNITED STATES DISTRICT COURT FOR DISTRICT OF NEVADA

CASE NO. CV-LV-79-142 RDF

HAYES V. HONORABLE JUSTICES OF THE NEVADA SUPREME COURT

Page 4.

"CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF"

Page 5, Line 9, Paragraph 16:

"Plaintiff's claims to relief can not be adequately litigated in the courts of Nevada. N.R.S. § 1.035 limits the amount of the award in actions sounding in tort and precludes an award of punitive or compensatory damages in actions against an officer or employee of the State of Nevada based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty. The persons who caused the Clark County School Board to breach its contract with Plaintiff, and deprived plaintiff of a due process hearing were employees or officers of the State or persons acting under color of law.

. . .

Page 5, Paragraph 19

"Plaintiff can not seek a declaratory judgment as to the invalidity of

PETITIONER'S COMPLAINT

Page 5, Line 27, Paragraph 19 (cont.)

N.R.S. 41.035, N.R.S. 41.032, N.R.A.P. 46(b) or (Nevada) Supreme Court Rule 44 in the Nevada Supreme Court. The federal court is the only forum available to her."

Page 5, Line 31, Paragraph 20

"Plaintiff will suffer immediate and irreparable harm unless the Supreme Court of Nevada is enjoined from proceeding further in this case."

Page 6, line 1, Paragraph 21

"Denial of Plaintiff's right of access to this court (federal district court) would deprive Plaintiff of her right to a prompt and expeditious determination of the Federal issues involved."

/ / /

December 26, 1979

The Honorable Roger Foley
Judge, U.S. District Court
District of Nevada
300 Las Vegas Blvd. South
Las Vegas, Nevada 89101

Re: Case No. CV-LV-79-142, RDF, Hayes v. Honorable Justices of the Supreme Court of Nevada

Dear Judge Foley,

. . .

No Order has been entered as yet in Case No. 79-142, RDF.

I filed a direct appeal to the Supreme Court of the United States, which was docketed on December 12, 1979, within the 90 day time limits prescribed b7 28 U.S.C. Sec. 1257(2). The case is No. 79-5777, Janice Hayes v. Board of Trustees of the Clark County School District, and concerns a same issue as in 79-142, RDF: . . .

I don't know what effect this has on the action pending before your court, but I wanted to advise you that the appeal has been taken.

Sincerely,
Janice Hayes

. . .

JANICE HAYES, Plaintiff, vs. THE HONORABLE JUSTICES OF THE NEVADA SUPREME COURT, Defendants.	DISTRICT COURT DISTRICT OF NEVADA CV-LV-79-142, RDF MINUTES OF THE COURT Feb. 7, 1980

MINUTE ORDER IN CHAMBERS

IT IS ORDERED that the motion to dismiss, filed on behalf of the Defendants on July 31, 1979 is hereby granted.

IT IS FURTHER ORDERED that the motion for leave to prosecute action in forma pauperis, filed on behalf of the Plaintiff on August 3, 1979 is hereby granted.

IT IS FURTHER ORDERED that the motion to strike, filed September 17, 1979, on behalf of the Plaintiff is hereby denied.

CAROL C. FITZGERALD, CLERK

BY: *Faye McMillan*
Deputy Clerk

JANICE HAYES, Plaintiff, vs. THE HONORABLE JUSTICES OF THE NEVADA SUPREME COURT, Defendants.	DISTRICT COURT DISTRICT OF NEVADA CV-LV-79-142, RDF MINUTES OF THE COURT Feb. 7, 1980

MINUTE ORDER IN CHAMBERS

IT IS ORDERED that the motion to dismiss, filed on behalf of the Defendants on July 31, 1979 is hereby granted.

IT IS FURTHER ORDERED that the motion for leave to prosecute action in forma pauperis, filed on behalf of the Plaintiff on August 3, 1979 is hereby granted.

IT IS FURTHER ORDERED that the motion to strike, filed September 17, 1979, on behalf of the Plaintiff is hereby denied.

CAROL C. FITZGERALD, CLERK

BY: *Faye McMillan*
Deputy Clerk

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEVADA

JANICE HAYES, Plaintiff, vs. THE HONORABLE JUSTICES OF THE NEVADA SUPREME COURT, Defendants.	Civ-LV-79-142, RDF MINUTES OF THE COURT March 20, 1980

MINUTE ORDER IN CHAMBERS

IT IS ORDERED that the motion for reconsideration of order dismissing complaint and denying motion to strike filed on behalf of Plaintiff on February 20, 1980, is hereby denied.

CAROL C. FITZGERALD, CLERK

BY: *Faye McMillan*
DEPUTY CLERK

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

JANICE HAYES, Plaintiff, vs. THE HONORABLE JUSTICES OF THE SUPREME COURT OF NEVADA, Defendants.	Civ-LV-79-142, RDF MINUTES OF THE COURT Dated: May 14, 1980

MINUTE ORDER IN CHAMBERS

IT IS ORDERED that Plaintiff's request for entry of judgment of dismissal and findings of fact and conclusions of law, filed May 6, 1980, is hereby stricken.

CAROL C. FITZGERALD, CLERK

BY: Faye McMillan
DEPUTY CLERK

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANICE HAYES, Plaintiff-Appellant, vs. THE HONORABLE JUSTICES OF THE SUPREME COURT OF NEVADA; JOHN C. MOWBRAY, CAMERON M. BATJER, ELMER GUNDERSON, NOEL MANOUKIAN, GORDON THOMPSON, INDIVIDUALLY and in their capacities as JUSTICES OF THE NEVADA SUPREME COURT, Defendants-Appellees.	FILED June 17, 1982 CA No. 80-5311 DC No. 79-142 MEMORANDUM

Appeal from the United States District Court for the District of Nevada

Roger D. Foley, District Judge, Presiding

Argued and submitted May 3, 1982

Before: BROWNING, Chief Judge, TANG and FARRIS, Circuit Judges.

We find no merit in Hayes's appeal of the district court's dismissal of her action. Her appeal before the Nevada Supreme Court

was not dismissed on the basis of Nev. R. App. P. (sic) 44 and 46(b)*, but at her request.

Hayes asserts no cognizable ground to enjoin the Nevada Supreme Court in the federal district court. *Mitchum v. Foster*, 407 U.S. 225 passim, (1972); *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S.281, 286-87 (1970). Whether the dismissal was with or without prejudice is no basis for injunctive relief. Even a dismissal without prejudice would not erase the state trial court's decision on the merits.

We find no error in the district court's dismissal for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

Affirmed.

* Nev. R. App. P. 44 is error. Should be Supreme Court Rule 44.

* On Hayes's motion, the Court corrected this error.

*Added by appellant

FILED

April 4, 1983

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANICE HAYES,	)	
	)	
Plaintiff-Appellant,	)	CA NO. 80-5311
	)	
vs.	)	DC No. CIV-LV-79-142, RDF
	)	
THE HONORABLE JUSTICES OF TEH NEVADA SUPREME COURT,	)	
	)	
Defendants-Appellees.	)	

ORDER

Before: BROWNING, Chief Judge, TANG, and FARRIS, Circuit Judges.

Appellant's motion to vacate orders and for dismissal of action for want of jurisdiction is denied.

NO. 82-1419

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

JANICE M. HAYES,

Petitioner,

vs.

THE HONORABLE JUSTICES OF THE SUPREME COURT OF NEVADA: NOEL MANOUKIAN, JOHN C. MOWBRAY, CHARLES SPRINGER, THOMAS STEFFEN and ELMER GUNDERSON, Individually and in their capacities as the Justices of the Nevada Supreme Court,

Respondents

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

---

PETITION FOR REHEARING

WITH

Request That The Court Note If Certiorari Was Denied On A Timeliness Issue Or Due To Petitioner's Request For Dismissal For Want Of Jurisdiction Pursuant to 28 U.S.C. 1254(1)

JANICE M. HAYES, ESQ.
3391 S. El Camino Road
Las Vegas, Nevada 89102
Telephone: (702) 871-5135
Petitioner
Attorney for Petitioner
(Petitioner will be eligible to be admitted to the Bar of this Court on September 23, 1983)

JUDGMENT RECEIVED AND FILED

UNITED STATE COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANICE HAYES,

Plaintiff-appellant,

vs.

HELEN C. CANNON, et al.,

Defendants-Appellees

No. 83-1889

DC CV 79-137 RDF

APPEAL from the Unites States District Court for the District of Nevada (Las Vegas)

THIS CAUSE came on be be heard on the Transcript of the Record from the United States District Court for the District of Nevada (Las Vegas) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this Cause be, and hereby is Affirmed.

A TRUE COPY
ATTEST June 13, 1985
PHILLIP B. WINBERRY
CLERK OF COURT

by:_____
DEPUTY CLERK

Filed and entered February 7, 1985

FILED

APR 05 1985

PHILLIP B. WINBERRY
Clerk, U.S Court of
Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANICE HAYS, ESQ.	)	
	)	NO. 83-1889
Plaintiff-Appellant,	)	
	)	
vs.	)	
	)	DC #CV 79-137,
HELEN C. CANNON; et al.,	)	RDF
	)	
Defendants-Appellees.	)	
	)	ORDER

Before: PHILLIPS,* FLETCHER and REINHARDT, Circuit Judges

Upon due consideration the petition for rehearing is hereby denied.

---

*Honorable Harry Phillips, Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORDER AMENDING RULE 46(b), NEVADA RULES OF APPELLATE PROCEDURE

IT IS HEREBY ORDERED that Rule 46(b) of the Nevada Rules of Appellate Procedure be, and the same hereby is, amended as follows:

(b) Appearances in Proper Person. (No party, except a habeas corpus petitioner, may appear in proper person before the Supreme Court.) *With leave of the Supreme Court, a party may file, in proper person, written briefs and papers submitted in accordance with these rules.*

. . .

Dated this 22nd day of October, 1981

BY THE COURT

NOEL MANOUKIAN CAMERON M. BATJER

CHARLES E. SPRINGER JOHN MOWBRAY

E.M. GUNDERSON, *Chief Justice*

First Amendment, United States Constitution:

Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition for a redress of grievances.

Fifth Amendment to the Constitution of the United States:

. . . (N)or shall any person be . . deprived of life, liberty, or property, without due process of law . . .

Fourteenth Amendment to the Constitution of the United States:

SECTION 1. . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life,

CUMULATIVE TABLE OF DISPOSITIONS

CITATIONS NOT AVAILABLE

Nev. 11992--app dism, cert gr 100 S Ct 1826; reh den 100 S Ct 3052